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IN THE

Supreme Court of the United States

ENGINE MANUFACTURERS ASSOCIATION AND
WESTERN STATES PETROLEUM ASSOCIATION,
Petitioners,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America is the world's largest business federation.[1] It represents an underlying membership of more than three million

[1] No counsel for any party authored this brief in whole or in part, and no person or entity, other than the amicus curiae and its members, made a monetary contribution to the preparation or submission of this brief. S. Ct. Rule 37.6. The brief is filed with the consent of the parties, and copies of the consent letters have been filed with the Clerk.

businesses and organizations of every size, in every industrial sector, and from every region of the country. The Chamber has participated as amicus curiae in several hundred cases before this Court, including numerous cases addressing the subject of federal preemption. *See, e.g.*, *Sprietsma* v. *Mercury Marine*, 537 U.S. 51 (2002); *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000); *United States* v. *Locke*, 529 U.S. 89 (2000); *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219 (1995).

SUMMARY OF ARGUMENT

SCAQMD's Fleet Rules are preempted by the Clean Air Act. The federal Act prohibits States and their political subdivisions from adopting standards relating to the control of emissions from new motor vehicles. That is exactly what the Fleet Rules do: they require fleet operators operating within the District to purchase or lease new vehicles that comply with specific low-emissions requirements set by SCAQMD. The Rules therefore violate the Clean Air Act's express preemption provision. And by introducing new, unapproved, local emissions requirements into a largely uniform federal regulatory scheme, the Rules also conflict with the paramount legislative concern behind the Clean Air Act: sparing vehicle manufacturers, retailers, and consumers from the burdens of outfitting (and paying more for) vehicles that must comply with a patchwork of variously demanding emissions requirements. The Fleet Rules are therefore not only expressly preempted by the Act; they are conflict-preempted. And—to complete the preemption trifecta—the Rules also intrude on an entire field that Congress has reserved to federal regulation: the creation of emissions standards governing new motor vehicles.

For all these reasons, the Fleet Rules are preempted.

ARGUMENT

THE FLEET RULES ARE PREEMPTED BY THE CLEAN AIR ACT.

"A fundamental principle of the Constitution is that Congress has the power to preempt state law." *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372 (2000). Congress exercised that constitutional power when it enacted the Clean Air Act: it made vehicle emissions a uniquely federal concern, and at the same time prohibited the States and "any political subdivision * * * [from] adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. § 7543(a). The preference for national emissions standards underscores precisely why the Constitution vests the power of preemption in Congress: were "each State to have a variation in standards and requirements[, it] could result in chaos insofar as manufacturers, dealers, and users are concerned." S. Rep. 89-192, at 6 (1965).

The Fleet Rules at issue in this case fall squarely within the broad preemptive scope of Clean Air Act. That is so whether the Rules are analyzed under any of the three preemption doctrines—express, conflict, or field—since none is "rigidly distinct" from the others. *Crosby*, 530 U.S. at 372 n.6 (quoting *English* v. *General Elec. Co.*, 496 U.S. 72, 79 n.5 (1990)). After all, the "ultimate touchstone" in preemption analysis is not selecting a proper label, but divining congressional intent. *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 208 (1985). Whatever the label assigned, the text, structure, and purpose of the Clean Air Act unmistakably show that the Fleet Rules are precisely the sort of parochial regulation that Congress intended to supersede. *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 138 (1990); *FMC Corp.* v. *Holliday*, 498 U.S. 52, 56-57 (1990). The judgment of the Ninth Circuit upholding the Rules should be reversed.

A. Section 209 Of The Clean Air Act Expressly Preempts Any Regulation Relating To The Control Of Emissions From New Motor Vehicles.

When Congress has made its preemptive intent known through explicit statutory language, this Court's task is "an easy one." *English*, 496 U.S. at 79; *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993). This is an easy case. Congress's intent to preempt state and local regulation relating to the control of motor-vehicle emissions is plain on the face of the Clean Air Act's express preemption provision, and is further confirmed by the structure and legislative history of that statute.

1. The Text Of Section 209 Plainly Applies To The Fleet Rules.

Section 209(a) of the Clean Air Act expressly provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles * * *. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle * * *. [42 U.S.C. § 7543(a).]

Each federal court of appeals to have addressed Section 209—until the Ninth Circuit below—has recognized that Congress's intent to preempt local emissions standards is both express and expansive. *See, e.g., American Auto. Mfrs. Ass'n* v. *Cahill*, 152 F.3d 196, 200 (2d Cir. 1998) (preemption under Section 209(a) occurs when a state or locality institutes "standards relating to the control of emissions," construed as "regulatory measures intended to lower the level of auto emissions"); *Association of Int'l Auto. Mfrs., Inc.* v. *Commissioner*, 208 F.3d 1, 6 (1st Cir. 2000). In *Cahill*, for example, the Second Circuit addressed a New York regulation requiring automobile manufacturers to sell a certain percentage of zero-emission vehicles ("ZEVs") per year. As with the Fleet Rules here, the *Cahill* court recognized that the New York regulation "has no purpose other than to effect a general reduction in emissions [and is] in the nature of a command having a direct effect on the level of emissions." 152 F.3d at 200. The Second Circuit therefore ruled that the ZEV sales requirement "must be considered a standard 'relating to the control of emissions,' " and thus was preempted by Section 209(a). *Id.*

By the same token, the First Circuit in *Commissioner*, 208 F.3d at 6, found a similar ZEV sales requirement in Massachusetts to be an impermissible "standard[] relating to the control of emissions." Following the lead of the Second Circuit, the court emphasized that Section 209(a) preemption depends on the *goal* of the local regulation. Where "the *very purpose and effect* of the ZEV mandates is to effect a quantitative reduction in emissions," the State regulation is necessarily preempted. 208 F.3d at 7 (citations omitted and emphasis added). *See also Motor & Equipment Mfrs. Ass'n* v. *EPA*, 627 F.2d 1095, 1106 (D.C. Cir. 1979) (construing "standards relating to the control of emissions" to include efforts by a state to reduce emissions by encouraging production of more durable emissions-related parts), *cert. denied*, 446 U.S. 1456 (1980).

The Ninth Circuit's approach to Section 209(a) runs directly counter to these decisions. Respondent SCAQMD, in its opposition to certiorari, candidly makes no pretense about the "very purpose and effect" of its Fleet Rules: to augment the ranks of public and private vehicle fleets in the South Coast District with exclusively low-emission new vehicles and thereby "reduce harmful emissions from certain motor vehicle fleets." Opp. 1. *See also* Pet. App. 15a (District Court recognizing that Fleet Rules are "an effort to reduce public exposure to motor vehicle pollution"). In particular, the Rules mandate that fleet operators—a group that controls

a high volume of pollution-emitting vehicles within the District—purchase or lease new vehicles that satisfy specific low-emissions standards. As in *Cahill*, the Fleet Rules have, in fact, "no purpose other than to effect a general reduction in emissions." *Cahill*, 152 F.3d at 200; *accord Commissioner*, 208 F.3d at 7. Accordingly, by their very design, the Fleet Rules—unmistakably "regulatory measures intended to lower the level of auto emissions" in the South Coast Air Quality District, *see Cahill*, 152 F.3d at 200—are "standards relating to the control of emissions from new motor vehicles." For that reason alone, preemption is warranted.[2]

The District Court below, in an opinion that the Ninth Circuit adopted wholesale, conveniently brushed all this aside by focusing *not* on the express language of Section 209(a) but instead on what it regarded as "Congress's purpose behind motor vehicle preemption." Pet App. 21a. This highly generalized characterization—tethered neither to the Act's text nor to its structure—led the court to conclude that the Fleet Rules were not preempted because they did not "run afoul of * * * the protection of manufacturers against having to build engines in compliance with a multiplicity of standards." *Id.* Not only did the court err in elevating buried

[2] There are still other ways in which the Fleet Rules violate Section 209(a). In certain situations, the Rules require fleet operators to obtain approval certificates from the District before purchasing new vehicles. *See, e.g.*, Fleet Rule 1186.1(d)(1)(B), (e) (requiring public and private sweeper fleet operators unable to purchase or lease alternative-fuel sweepers to obtain Technical Infeasibility Certifications prior to purchasing or leasing new sweepers); Fleet Rule 1196(d)(4), (e) (same rule for heavy-duty public fleet vehicles). The Rules therefore improperly impose "certification" requirements "relating to the control of emissions from any new motor vehicle * * * as condition precedent to the initial retail sale * * * of such motor vehicle"—a category of regulation expressly preempted by the second sentence of Section 209(a).

"purpose" over plain text,[3] but its selective view of the Clean Air Act's purpose was wrong as well.

Based on its own view of the purpose behind Section 209 preemption, the District Court drew a distinction between State vehicle-emissions standards that apply to the *sale* of new vehicles and those that apply to *purchases*. *Id.* at 21a-22a. The statute, however, draws no such distinction—"*any* standards relating to the control of emissions," whether they target the sale *or* purchase of motor vehicles, are preempted. 42 U.S.C. § 7543(a) (emphasis added). But in any event, even if the District Court were right (it was not) that Section 209's driving purpose was to protect manufacturers "against having to build engines in compliance with a multiplicity of standards," Pet. App. 21a, and even if the District Court were right (it was not) to focus on that purpose to the exclusion of the text, the fact remains that placing emissions restrictions on the *purchase* of vehicles necessarily affects the *sale* of those vehicles. To draw a line between emissions sales (preempted) and purchases (not preempted) is, as far as Section 209 is concerned, truly a distinction without any difference.

Indeed, other courts have squarely recognized that Section 209(a) preempts state regulations that impose requirements on both the consumers who purchase vehicles and the manufacturers that sell them. In *Sims* v. *Florida, Dep't of Highway Safety & Motor Vehicles*, 862 F.2d 1449, 1454-55

[3] *See Gade* v. *National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 111 (1992) ("A freewheeling judicial inquiry into whether a state statute is in tension with federal objectives would undercut the principle that it is Congress rather than the courts that pre-empts state law.") (Kennedy, J., concurring in part and concurring in judgment); *FMC Corp.* v. *Holliday*, 498 U.S. at 57 (in determining preemption, "[w]e begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose") (quotations omitted).

(11th Cir. 1989) (en banc), *cert. denied*, 493 U.S. 815 (1980) for example, the Eleventh Circuit considered a state requirement that owners of "gray-market" automobiles—those not intended to be imported into the United States, and thus not necessarily in compliance with domestic emissions standards—demonstrate EPA certification before titling, registering, or selling the vehicles. The court held that this requirement, which it described as "[e]nforcement of the Clean Air Act before [the] first sale [of new motor vehicles]," was preempted by Section 209(a). *Id.* at 1455. Two other courts have considered nearly identical regulations and have decided the question the same way. *See Direct Auto. Imports Ass'n* v. *Townsley*, 804 F.2d 1408, 1411 (5th Cir. 1986); *Georgia Auto. Importers Compliance Ass'n* v. *Bowers*, 639 F. Supp. 352, 356-357 (N.D. Ga. 1986).[4]

Furthermore, fleet composition regulations imposed on *purchasers* of nonroad vehicles, akin to the SCAQMD Fleet Rules here regulating motor vehicles, have already been viewed as preempted under Section 209(e) of the Act, which preempts "any standard or other requirement relating to the control of emissions" of nonroad vehicles. *See Engine Mfrs. Ass'n* v. *Huston*, 190 F. Supp. 2d 922 (W.D. Tex. 2001), *vacated as moot*, No. 01-50819 (5th Cir. Mar. 5, 2002). In *Huston*, the State of Texas adopted a regulation requiring individuals operating construction machinery in the Dallas-Fort Worth area "to have fleets with certain percentages of machines of the most modern low-emission design as pre-

[4] These courts relied on the second sentence of Section 209(a), which prohibits states from requiring "certification, inspection or any other approval relating to the control of emissions from any new motor vehicle * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle * * *." 42 U.S.C. § 7543(a). As noted above, *supra* n.2, this prohibition equally applies here, in instances where the Fleet Rules require fleet operators to obtain approval certificates from the District as a condition precedent to the purchase or lease of new vehicles.

scribed by the federal standard." 190 F. Supp. 2d at 928. Relying on EPA's express preemption of "fleet average standards" for nonroad vehicles in 40 C.F.R. § 85.1603(c)(2), as well as on *Cahill* and *Commissioner*, the district court found that the state rule imposed emission standards. It thus held that the fleet composition requirement was preempted by Section 209(e) of the Clean Air Act—which, although worded slightly differently than Section 209(a), does *not* contain any language suggesting that state law regulating purchasers would be preempted under 209(e), but not 209(a).[5]

The District Court below also attempted to distinguish *Cahill* and *Commissioner* by reading the statutory phrase "standards relating to the control of emissions" as requiring "numerical control[s] on new vehicles." Pet. App. 21a. Yet once again, the statute in no way limits emissions standards to *quantitative* limits on emissions from new vehicles; certainly no court—until now—had ever adopted such a cramped interpretation. The Second Circuit in *Cahill* found that New York's ZEV sales requirement "d[id] not impose precise overall quantitative limits on levels of emissions," but nonetheless found preemption because the regulation had "no purpose other than to effect a general reduction in emissions." 152 F.3d at 200.[6] And the court in *Huston* flatly

[5] Section 209(e) notably does not appear to incorporate the savings clause for motor vehicles, 42 U.S.C. § 7543(d)—which allows states to regulate the use, operation, or movement of motor vehicles (otherwise known as "in-use controls")—into the nonroad vehicle provision. Significantly, however, the *Huston* court dismissed Texas's "attempt to portray [the Fleet Composition Requirement] as merely an in-use control," finding it to be "*clearly* an attempt by the state to control the emissions of nonroad vehicles through a 'standard or other requirement.' " 190 F. Supp. 2d at 929 (emphasis added).

[6] Likewise, in *Sims*, *Townsley*, and *Bowers*, the states had not imposed any new emissions requirements on manufacturers; on the

rejected the same argument, finding preemption despite the state's contention that its fleet composition rule "place[d] no technology-forcing sales restriction or sales quotas on nonroad equipment manufacturers." 190 F. Supp. 2d at 928. Thus all other courts to have considered the issue have not focused on the presence or absence of strict numerical emissions limits, but rather on the impact the state law has on aggregate emissions levels. Because SCAQMD's Fleet Rules were expressly "enacted to reduce harmful emissions from certain motor vehicle fleets," Opp. 1, they are pre-empted by Section 209(a), regardless of how they do it.

2. The Fleet Rules Are Regulations "Relating To" The Control Of Emissions.

Because Section 209 expressly prohibits political subdivisions like SCAQMD from "adopt[ing] * * * any standard relating to the control of emissions," the question in this case is not whether Congress intended to preempt State emissions regulations—it clearly did—but how far Congress intended to go. To resolve that inquiry, "the key phrase, obviously, is 'relating to.' " *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). For the broader the interpretation, the less directly the Fleet Rules need regulate emissions to be preempted.

Here, the Court's interpretive task is straightforward. In a long line of preemption cases focusing on statutes that employ identical or virtually identical language, this Court has consistently recognized that the words "relating to" "express a broad pre-emptive purpose." *Id.* at 383. Thus, in surveying the preemptive scope of the Airline Deregulation Act at issue in *Morales*—which expressly preempted state

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contrary, they expressly enforced already-existing Clean Air Act standards. And in *Motor & Equipment Manufacturers*, 627 F.2d at 1103, the state was simply regulating the instructions manufacturers could give to purchasers—hardly a new emissions requirement, much less a *quantitative* emissions requirement.

laws or standards "relating to" airline rates—this Court started from the premise that "[t]he ordinary meaning of these words ["relating to"] is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.' " *Id.* at 383 (quoting Black's Law Dictionary 1158 (5th ed. 1979)). From there, the Court easily concluded that this "deliberately expansive" clause should have a broad preemptive "sweep." *Id.* at 384.

Morales's take on the words "relating to" was not unprecedented or peculiar to the ADA. In at least a dozen cases over the past 20 years, this Court has addressed preemption under the Employee Retirement Income Security Act, another comprehensive federal statute that—echoing Section 209's preemption clause—expressly supersedes state laws "relate[d] to" ERISA plans. 29 U.S.C. § 1144(a). In applying this clause to a variety of different contexts, this Court has "observed repeatedly that this broadly worded" phrase—"related to"—is "clearly expansive." *Egelhoff* v. *Egelhoff ex rel. Breiner*, 532 U.S. 141, 146 (2001). Indeed, as with the ADA's preemption clause at issue in *Morales*, this Court has acknowledged that the "breadth of [ERISA's] pre-emptive reach is apparent from [its] language," *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 96 (1983), demonstrating Congress's intent to create a preemption clause of "broad scope," *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985), and "expansive sweep." *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 47 (1987).

Of course, while "conspicuous for their breadth," *FMC Corp.*, 498 U.S. at 58, "relates to" clauses obviously do not "extend to the furthest stretch of * * * indeterminacy," preempting laws with " 'only a tenuous, remote, or peripheral connection' " to the statute's purpose. *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 655, 661 (1995) (citation omitted). To give effect to Congress's "deliberately expansive" pre-

emptive command, *Pilot Life*, 481 U.S. at 46, while at the same time insulating peripheral state laws from unnecessary federal preemption, this Court has identified two types of laws that are subject to preemption for impermissibly "relating to" an area of exclusive federal concern: first, laws that specifically "refer to" the federal interest and, second, those that otherwise have a "connection with" the federal interest. *See, e.g.*, *Shaw*, 463 U.S. at 97 (state law "relate[s] to" an ERISA plan and is therefore preempted "if it has a connection with, or reference to, such a plan"); *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 324-325 (1997) (same); *Morales*, 504 U.S. at 384 (same). To adapt the language of *Morales* to this case, 504 U.S. at 384, because "the relevant language of the [Clean Air Act] is identical" to the preemptive clauses in the ADA and ERISA, it is therefore "appropriate [for this Court] to adopt the same standard here": regulations issued by political subdivisions that "refer to" or have a "connection with" emissions standards are preempted under Section 209(a).

Whatever the outer limits of 209's preemptive sweep, this Court need not plot its bounds here. *Cf. Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. at 220 ("The full scope of the preemptive effect * * * [can] remain[] to be fleshed out on a case-by-case basis."). That is because the Fleet Rules—as regulations that expressly refer to emissions standards and, in SCAQMD's own words, attempt to "reduce harmful emissions from certain motor vehicle fleets," Opp. 1—comfortably fit within the scope of core concerns for which Congress preserved exclusive federal control.

Indeed, the fact that the Fleet Rules expressly incorporate and refer to vehicle-emissions standards[7] is enough, by itself,

[7] *See, e.g.*, Pet. App. 16a & nn. 3-4 (Fleet Rule 1191 expressly requires certain fleet operators "to acquire low-emitting gasoline or

to justify preemption. As this Court has recognized in an analogous context, a "state statute's express reference to ERISA plans suffices to bring it within the federal law's preemptive reach." *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 830 (1988). Although this Court has since suggested that the federal interest to which the state statute makes express reference must also be "essential to the [state] law's operation," *Dillingham*, 519 U.S. at 325, that is surely the case here. After all, the Fleet Rules would be meaningless if they no longer referred to emissions standards, since their very purpose is to compel fleet operators to purchase vehicles that satisfy specific and strict emissions standards.

Yet regardless of whether the Fleet Rules' express invocation of vehicle-emissions standards is enough to warrant preemption, those repeated references demonstrate that the Rules' pervasive influence over emissions is no accident or coincidence. Thus, this case is nothing like those state regulations of general applicability that this Court has held immune to preemption because they had " 'only a tenuous, remote, or peripheral connection' " with an exclusive federal interest. *Travelers*, 514 U.S. at 661 (citation omitted).[8] Here, the Fleet Rules do not simply have some "indirect economic effect on choices made by" fleet operators and manufacturers. *Travelers*, 514 U.S. at 659. Rather, they are

alternative-fueled vehicles," both of which are established emissions standards).

[8] *See, e.g.*, *Travelers*, 514 U.S. at 659 (state law imposing surcharge on hospital patients insured by commercial insurers other than Blue Cross had only "an indirect economic effect on choices made by insurance buyers, including ERISA plans"); *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 810-816 (1997) (state tax imposed on all hospitals, including those administered by ERISA plans, not preempted); *Dillingham*, 519 U.S. at 330 (state law requiring all contractors to pay prevailing wage applied generally and was not preempted).

quite purposefully intended to "dictate the choices" of both constituencies. *Dillingham*, 519 U.S. at 334. With respect to fleet operators, the Rules plainly leave them with no choice other than to purchase vehicles that comply with SCAQMD's chosen emissions standards. And while manufacturers are not directly targeted by the Rules, they will inevitably be forced to modify their production schedules to satisfy the artificial demand for low-emission vehicles created by the Fleet Rules.

Given that the Fleet Rules have absolutely *no other purpose* than "to reduce harmful emissions from certain motor vehicles," Opp. 1, the argument for preemption is even clearer. This Court's precedents have never required as a condition for preemption that a state law single-mindedly target an area of exclusive federal concern. *See Ingersoll-Rand*, 498 U.S. at 139 ("a state law may 'relate to' a benefit plan, and thereby be preempted, even if the law is not specifically designed to affect such plans, or the effect is only indirect"). Thus, so long as the effect on the federal interest was not too tenuous or remote, this Court has found preempted common-law tort and contract suits, *Pilot Life*, 481 U.S. at 47-48, a state law requiring health-insurance plans to cover certain mental-health expenses, *Metropolitan Life*, 471 U.S. at 739, and workers' compensation laws, *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981). The Fleet Rules, by contrast, are focused on one thing only: reducing emissions through stringent vehicle-emissions standards. That is an area Congress expressly left to federal control. *See* H.R. Rep. No. 89-899, at 5 (1965) ("The Committee is convinced that motor vehicle exhaust control standards on a national scale are necessary and would be of benefit of the entire country. * * * The high rate of mobility of automobiles suggests that anything short of nationwide control would scarcely be adequate to cope with the motor vehicle pollution problem.").

Whether the Fleet Rules "plainly further the federal Clean Air Act's core purpose—to reduce pollution," as SCAQMD has maintained (Opp. 1), is irrelevant to whether they impermissibly "relate to" emissions standards. As this Court has recognized when construing both the ADA and ERISA, those "pre-emption provision[s] * * * displace[] all state laws that fall within its sphere, *even including state laws that are consistent with* [the federal act's] substantive requirements." *Morales*, 504 U.S. at 387 (quoting *Mackey*, 486 U.S. at 829) (ellipses omitted and emphasis added). If anything, the fact that SCAQMD's Fleet Rules concededly touch upon "core" emissions-standards concerns illustrates why the Rules clearly fall within the preemptive sweep of Section 209.

It is also too facile an analysis to assume that anything a State—or political subdivision—does to reduce air pollution necessarily vindicates Congress's interests and should be permitted. As this Court has held:

> "[N]o legislation pursues its purposes at all costs. Deciding what competing value will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." [*Pension Benefit Guar. Corp.* v. *LTV Corp.*, 496 U.S. 633, 646-647 (1990) (emphasis in original) (citation omitted).]

The Clean Air Act is no different. Congress's overarching goal in enacting it was, of course, to reduce air pollution, but the legislature was also keenly aware that regulations must be fashioned pragmatically so as not to strangle industry and the economy. Section 209(a) represents Congress's view that, whatever incremental environmental value there would be in allowing States and their political subdivisions to promulgate their own emissions standards, the interests of consumers,

industry, and interstate commerce required a national solution.

Equally unilluminating are the usual bromides that Congress should not be presumed to preempt areas of traditional state concern. *See* Pet. App. 8a-9a, 24a. The presumption against preemption of areas of "traditional" state regulation is just that—a presumption. It is overborne where, as here, Congress clearly intended to displace state law: "[T]he relative importance to the State of its own law is not material when there is a conflict with valid federal law, for the Framers of our Constitution provided that the federal law must prevail." *Fidelity Federal Sav. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. 141, 153 (1982) (quoting *Free* v. *Bland*, 369 U.S. 663, 666 (1962)). Thus this Court has recognized that the mere fact that "the States traditionally regulated these areas would not alone immunize their efforts." *Dillingham*, 519 U.S. at 330. ERISA, for example, "certainly contemplated the pre-emption of substantial areas of traditional state regulation." *Id.* And while States no doubt play a significant role in regulating air pollution—both before and after the Clean Air Act—Congress was careful to carve out vehicle-emissions standards as a particularly federal concern. As the House Report declared: "While the committee is cognizant of the basic rights and responsibilities of the States for control of air pollution, it is apparent that the establishment of Federal standards applicable to motor vehicle emissions is preferable to regulation by individual States." H.R. Rep. No. 89-899, at 5. Assumptions about traditional state roles cannot trump Congress's clear intent to preempt state law.

3. Section 209's Structure Likewise Supports The Conclusion That The Fleet Rules Are Preempted.

Not only does the text of Section 209 mandate express preemption of the Fleet Rules; its structure does as well. As noted, Section 209(a) prohibits any state or local "standards

relating to the control of emissions," including "certification, inspection, or any other approval * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle." 42 U.S.C. § 7543(a). Under this provision, then, states and localities may not regulate motor vehicle emissions from the time of manufacture to the time of the initial sale and registration of the new motor vehicle.

Section 209(d), however, preserves the rights of the states and localities to regulate *post-purchase* activities, including "the use, operation, or movement," of motor vehicles in their jurisdiction. 42 U.S.C. § 7543(d). Through this bifurcated framework, the Clean Air Act evinces "Congress's intent to exclusively enforce federal emission standards relating to new automobiles before their initial sale because the statute specifically allows the states to regulate automobile use and operation *subsequent* to the initial sale." *Sims*, 862 F.2d at 1455 n.8 (quoting 42 U.S.C. § 7543(d)) (emphasis in original); *cf. Motor & Equipment Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449, 452 (D.C. Cir. 1998) ("Subchapter I of the Act is primarily concerned with the ground rules for the implementation of these *post-purchase* programs by the states. Subchapter II of the Act vests in the federal government the almost exclusive responsibility for establishing automobile emissions standards for new cars.") (emphasis added).

Thus, once motor vehicles are no longer "new" for preemption purposes, states and localities are free to regulate post-purchase activities, such as the "in-use regulations" preserved for the states through Section 209(d), which the courts have interpreted to include carpool lanes, restrictions on car use in urban areas, and programs to limit excessive idling. *See Huston*, 190 F. Supp. 2d at 929 n.5; *cf. Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d 1075, 1093 (D.C. Cir. 1996). Other post-purchase activities include motor vehicle inspection programs and transportation control programs designed to reduce vehicle miles traveled—two examples cited by

SCAQMD, *see* Opp. at 4, for the proposition that states still have some role in the reduction of air pollution.

There is no dispute that States may regulate the use of existing motor vehicles within their jurisdiction. What they simply may not do under Section 209(a) is regulate the *emissions standards* for new motor vehicle sales. Yet that is precisely what SCAQMD's Fleet Rules do. They therefore are preempted.

4. The Legislative History Of Section 209 Further Confirms Congress's Express Preemptive Intent.

The legislative history of the Clean Air Act confirms what the text and structure already make clear: that Section 209(a) "provides *explicit* Federal preemption of the power to set standards on emissions from new motor vehicles and engines." H.R. Rep. No. 90-728, at 36 (1967) (emphasis added). Throughout the House Report accompanying the 1967 Act—which introduced the preemption provision—the Committee emphasized that it was imperative that Congress establish a uniform, nationwide system of emissions regulations for new motor vehicles. *See, e.g., id.* at 21 ("Rather than leave [the question of the extent to which the Federal standards should supercede state and local laws on emissions from motor vehicles] to the uncertainties involved in litigation, the committee has agreed * * * that State laws applicable to the control of emissions from new motor vehicles * * * are superceded."); *id.* at 22 ("The committee therefore decided to provide for uniform administration of standards for motor vehicle emissions, by providing that [ultimately, the Administrator of the EPA] shall administer the program of control of automotive emissions.").

Congress saw fit to make just one discrete and limited exception to its uniform regulatory scheme: the State of California. *See* 42 U.S.C. § 7543(b)(1) (allowing limited waiver of federal preemption for California, as long as "the State standards will be, in the aggregate, at least as protective

of public health and welfare as applicable Federal standards"); *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d at 1079. Based on California's "compelling and extraordinary conditions requir[ing] more stringent standards," Congress expressly authorized California—in certain circumstances not at issue here—to deviate from an otherwise uniform system. H.R. Rep. No. 90-728, at 21. And while Congress later amended the statute to allow other States to replicate California's program if the State's standards were "identical to the California standards," 42 U.S.C. § 7507, it notably authorized no other exceptions. *Cf. Andrus* v. *Glover Constr. Co.*, 446 U.S. 608, 616-617 (1980) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.").

SCAQMD has not applied for, and has never received, a statutory waiver of preemption for its Fleet Rules. Nor could it, for its Fleet Rules fundamentally diverge from the federally approved California standards. *See* Pet. App. 23a ("The Fleet Rules require purchasers to choose from among a *subset* of previously certified California vehicles.") (emphasis added). By imposing local variation in the type of motor vehicles that may be purchased or leased in the South Coast District, the Fleet Rules are expressly preempted by Section 209(a).

B. The Fleet Rules Conflict With The Purposes Of The Clean Air Act.

In addition to being expressly preempted by Section 209(a), the Fleet Rules also are preempted under elementary principles of conflict preemption. *See Geier* v. *American Honda Co.*, 529 U.S. at 873 (local laws are preempted if they "prevent or frustrate the accomplishment of a federal objective"). As we have explained, the Clean Air Act's motor-vehicle-emissions scheme has supplanted piecemeal state regulation with exactly two choices of emissions standards—

national, or (again, in circumstances not applicable here) California. SCAQMD's attempt to supplement this scheme through local regulation hopelessly frustrates this national objective.

While Congress openly recognized that the states had a valid interest in the control of air pollution, it concluded that *only* California had demonstrated the requisite need and ability to set its own motor vehicle emissions standards. *See* H.R. Rep. No. 90-728, at 20 ("While the committee is cognizant of the basic right and responsibilities of the States for control of air pollution, it is apparent that the establishment of Federal standards applicable to motor vehicle emissions is preferable to regulation by individual States.") (quoting H.R. Rep. No. 89-899, at 5); *id.* at 21-22 (allowing an exception for California). Yet not even California was granted unbridled discretion to set emissions standards; the state must first obtain a waiver from the federal government before promulgating new (and conflicting) emissions standards. *See id.* at 22.

Congress endeavored to ensure uniformity in emissions for several reasons:

> to protect the manufacturer against having to build engines which would comply with a multiplicity of standards; to protect the vehicle owner from having to deal with different standards in each state in which he drives; to avoid the unnecessary duplication of federal standards; to avoid 'unnecessary expense' to the owner; and generally to avoid 'chaos' and 'confusion.' [*California ex rel. State Air Resources Board* v. *Department of Navy*, 431 F. Supp. 1271, 1285 (N.D. Cal. 1977), *aff'd*, 624 F.2d 885 (9th Cir. 1980) (internal quotation and citation omitted).][9]

[9] *See also Allway Taxi, Inc.* v. *City of New York*, 340 F. Supp. 1120, 1124 (S.D.N.Y.) (interpreting the legislative history and text of Section 209(a) to conclude that the purpose was "to prevent the burden on interstate commerce which would result if, instead of uniform standards, every state and locality were left free to impose different standards for exhaust emission control devices for the manufacture and sale of new cars"), *aff'd*, 468 F.2d 624 (2d Cir. 1972).

Of course, Congress has not deprived the States from playing *any* role at all in curbing vehicle emissions; as we have explained, *supra* at 17-18, once vehicles have been manufactured, sold, and registered, states may impose use-based emissions regulations (such as carpool lane restrictions) without federal approval. 42 U.S.C. § 7543(d).[10] These exceptions make sense, since they allow States a hand in caring for their own environment while not undermining Congress's strong interest in ensuring that automobile manufacturers are not subjected to a patchwork of disparate emissions standards.

The Fleet Rules, however, frustrate Congress's goal of uniformity by imposing both separate emissions standards and a separate administrative scheme for the fleet vehicles used in the South Coast District. Indeed, the District Court's determination that "[t]he Rules impose no new emission requirements on manufacturers whatsoever," Pet. App. 21a, is demonstrably wrong. By establishing its own requirements for fleet vehicles in its region, SCAQMD forces

[10] States may also adopt clean-fuel vehicle fleet rules, 42 U.S.C. § 7586. Notably, such regulations may only be imposed at the state level *and* require federal approval. Contrary to the lower court's observation, SCAQMD, as a locality, would not be permitted to obtain authorization for its own local Fleet Rules. 42 U.S.C. § 7586 (providing that "states" apply for such authorization). Moreover, there has been no indication that the State of California, or SCAQMD for that matter, has contemplated doing so—especially given that California's federally approved program allows vehicles that SCAQMD's Fleet Rules expressly prohibit fleet operators in the District from purchasing or leasing.

manufacturers to incorporate localized standards into their production and distribution schemes. Yet Congress has firmly warned against this kind of a disruption to the manufacturing process:

> The manufacture of automobiles is a complex matter, requiring decisions to be made far in advance of their actual execution. The ability of those engaged in the manufacture of automobiles to obtain clear and consistent answers concerning emission controls and standards is of considerable importance so as to permit economies in production. [H.R. Rep. No. 90-728, at 21.]

More fundamentally, to sanction SCAQMD's Fleet Rules would invite every political subdivision in the country to adopt its own unique set of emissions standards—whether limited to "fleets" or otherwise. *Cf. Healy* v. *Beer Inst., Inc.*, 491 U.S. 324, 340 (1989) ("[I]f Connecticut may enact a contemporaneous affirmation statute, so may each of the border States and, indeed, so may every other State in the Nation."). If, for example, another subdivision imposes similar or even more stringent emissions standards on fleet vehicles, an entire line of federal- and California-approved vehicles could be phased out, without any EPA input. Congress has censured exactly that result, noting that "[w]hile manufacturers could meet [the problems of differing regulations] by building vehicles that meet whichever standard is the more stringent, this would lead to increased costs to consumers nationwide * * *." H.R. Rep. No. 90-728, at 22. Given Congress's strong desire to avoid "undue and unnecessary expense to the user," S. Rep. No. 89-192, at 8, such a practice cannot be tolerated.

Allowing regulations like the Fleet Rules also would likely result in state and local governments imposing different mixes of emissions levels on fleet vehicles within their jurisdictions. This amalgamation of various emissions

requirements and administrative schemes would conjure up the "spectre of an anarchic patchwork of federal and state regulatory programs [that would] create nightmares for the manufacturers," *Motor & Equipment Mfrs. Ass'n*, 627 F.2d at 1109, and result in the very "chaos insofar as manufacturers, dealers, and users are concerned" that prompted Congress to preempt local emissions laws in the first place. S. Rep. No. 89-192, at 6.

Whether any other political subdivision would soon follow SCAQMD's lead in attempting to dictate its own emissions standards, just these Fleet Rules alone have already created administrative and manufacturing difficulties for all entities involved in the automotive industry. That is precisely the sort of intolerable federal-state conflict that justifies preemption. The Fleet Rules should be invalidated.

C. Congress Has Indicated An Intent To Occupy The Entire Field Of Regulation Relating To Emissions From New Motor Vehicles.

Section 209(a) expressly preempts the Fleet Rules. It also impliedly preempts the Fleet Rules. And preemption of the Fleet Rules is further confirmed by Congress's intent to exclusively occupy the new motor vehicle emissions field of regulation.

This Court generally finds field preemption where the "scheme of federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," or the Act in question "touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). That is the case here.

To begin with, the Clean Air Act's preemption scheme has long been construed by this Court and the federal courts of appeals as imposing federal control over the entire field of vehicle-emissions regulation. *See Washington* v. *General*

Motors Corp., 406 U.S. 109, 114 (1972) ("Congress has largely pre-empted the field with regard to 'emissions from new motor vehicles.' ") (citing to the former codification of Section 209(a)); *Engine Mfrs. Ass'n* v. *EPA*, 88 F.3d at 1079 ("In contrast to federally encouraged state control over stationary sources, regulation of motor vehicle emissions had been a principally federal project."); *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envtl. Conservation*, 79 F.3d 1298, 1302 (2d Cir. 1996) ("In general, state regulation of automotive tailpipe emissions is preempted by the federal Clean Air Act."); *Motor & Equipment Mfrs. Ass'n*, 627 F.2d at 1109 ("Congress in 1967 expressed its intent to occupy the regulatory role over emissions control to the exclusion of all the states—all, that is, except California."); *City of Chicago* v. *General Motors Corp.*, 467 F.2d 1262, 1264 (7th Cir. 1972) (Section 209(a) preempts the "entire field of standards for emissions from new motor vehicles"). In fact, Congress's control over the field is so pervasive that courts have found preempted not only emissions requirements directly imposed on manufacturers, but also those imposed on consumers as well. *See Sims*, 862 F.2d at 1454-55; *Townsley*, 804 F.2d at 1411; *Huston*, 190 F. Supp. 2d at 928-929; *Bowers*, 639 F. Supp. at 355-357.

Events leading to the passage of the Clean Air Act make clear that when Congress ultimately entered the field of emissions regulation, it did so to occupy it to the exclusion of the States. Thus, two years before enacting Section 209, Congress had authorized federal emissions regulations without any restrictions on the States' involvement. *Motor & Equipment Mfrs. Ass'n*, 627 F.2d at 1108. That experiment failed. *See Motor Vehicle Mfrs. Ass'n, Inc.* v. *New York State Dep't of Envtl. Conservation*, 17 F.3d 521, 524-525 (2d Cir. 1994); *Engine Mfrs. Ass'n*, 88 F.3d at 1079; *Motor & Equipment Mfrs. Ass'n*, 627 F.2d at 1109. Thus was born Section 209(a), prohibiting the states from adopting their own standards. *See Engine Mfrs. Ass'n*, 88 F.3d at 1079. As

we have explained, in deciding to enter the field and displace state regulation, Congress sought to vindicate a compelling national interest in uniform federal regulation. *See* H.R. Rep. No. 90-728, at 20-23. Aside from making a limited exception for California, Congress simply left no room for state interference.

D. The Ninth Circuit's Careless Decision Should Be Reversed, Lest It Become The Baseline For Analyzing An Express Preemption Clause.

The brief for the petitioners, and those of amici associated with the automobile industry, quite correctly emphasize the effect of the ruling below on automobile manufacturers, fleet owners, and buyers. The decision's broader potential for creating havoc in express preemption cases, however, also should not be overlooked. In an opinion lauded as "well-reasoned" by the Ninth Circuit and adopted by that court without further ado, the District Court imposed on the Clean Air Act's express preemption clause a strained counter-textual reading of the statute that preserved a plainly pre-empted local emissions regulation, all in the face of compelling and directly contrary precedent—not to mention common sense. This Court should not lightly tolerate the semantic gymnastics that led to the decision here—*e.g.*, a "purchase" is substantively different from a "sale," and a "standard" is not a "standard" unless it is a "numerical control." If upheld, those facile conclusions will spawn other equally superficial distinctions in other preemption cases, until the unadorned text of an express preemption clause becomes only the jumping-off point for clever lawyers to introduce needless confusion into plain words.

The Fleet Rules are preempted by the Clean Air Act's express preemption provision, every which way—expressly, impliedly, and across the field. The Ninth Circuit's ruling to the contrary should be reversed.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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